

October 17, 2001 –via electronic filing

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, Room 5-C450
Washington, DC 20554

Dear Ms. Attwood:

Re: Ex parte filing in CC Docket No. 96-45

We are writing to you as individual members of the Rural Task Force (RTF) to urge correction or clarification to avoid what we are sure is an unintended “glitch” in §36.603, the Commission rule implementing the RTF proposal to “rebase” and then “recap” high cost loop support for rural carriers. Prompt correction is essential because the difference between what the RTF proposed and the Commission said it was adopting and the words used to implement the rebased cap would slash the intended rebased support by more than \$77 million in 2002 and by more than \$428 million over the five-year term of the interim rural carrier support mechanism according to calculations performed by NECA.

We believe that the record clearly establishes what the Commission, the Joint Board and the RTF intended in modifying the indexed cap on loop support. After extensive study and debate, the RTF’s members, representing a broad range of industry and consumer interests, had agreed on an interim support mechanism that included a plan for resetting the existing cap on high cost loop support. The Commission “adopt[ed] the rural Task Force’s recommendation,” explaining (¶41) that:

We agree with the Rural Task Force ... that the indexed cap on the rural incumbent local exchange carrier portion of the high-cost loop fund should be recomputed or “re-based” as if the indexed fund cap and the corporate operations expense limitation had not been in effect for the calendar year 2000. Effective July 1, 2001, rural carriers shall receive increased high-cost loop support based on uncapped support amounts for the calendar year 2000, plus a rural growth factor equal to

the sum of annual changes in the total number of working loops for rural carriers and the GDP-CPI.¹

The Commission held (§38) that the resulting rebased and recapped support is “within the range of sufficiency” and will (§13) “ensure that rural carriers are able to continue providing supported services at affordable and reasonably comparable rates during the transition” The Commission twice (notes 90, 170) relied on the RTF’s estimate that “re-basing will result in an initial \$118.5 million increase in the high-cost loop support fund, representing \$83.9 million from removing the overall cap on high-cost loop support and \$34.6 million from removing the corporate operations expense limitation, used when calculating high-cost loop support.” Echoing the Joint Board² and the RTF’s impact calculations, the Commission further estimated that “the modified embedded cost mechanism will result in an increase in rural carrier support of approximately \$1.26 billion over the five-year period.” Chairman Powell also relied on the record facts about impact to point out in his separate statement that “increases to rural high-cost loop support will begin relatively modestly (roughly \$126 million total support for Year 1) and then ramp up to a total price tag over the five year term of the plan of over \$1 billion.”

The draft rules proffered by the Rural Leadership Coalition (RLC), on which several of us participated for the purpose of providing specific rules language that would effectuate the RTF proposal, proposed to rebase loop support “as if the indexed fund cap and the corporate limitation had not been in effect for the calendar year 2000.” The model rules even included the amount of the rebased cap based on then-available data, stating that the amount would be “computed to be \$118,500,000, “based on 1998 calendar year data” The new base would then be adjusted by a new Rural Growth Factor. The RTF’s estimates and rules were computed and drafted consistent with the RTF’s assumption of implementation effective January 1, 2001. Based on that expectation, the model rules contained a statement that the support for 2001 and succeeding years could not “exceed the amount of the total rural carrier loop cost expense adjustment for the immediately preceding calendar year,” adjusted by the rural growth factor. The revised impact information filed by the RTF on November 10, 2000,³ calculates a support cap for the second year of implementation, which, consistent with the RTF proposal, used all of 2000’s rebased support in applying the previous “calendar year” cap. That maximum support level was then used in calculating a five-year impact.

¹ The Commission adopted almost all of the RTF’s interim support proposal in *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256*, FCC 01-157, §§13, 38 *et. seq.* (rel. May 23, 2001) (Rural Support Order).

² *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00J-4 (released December 22, 2000), at §11.

³ See Letter from William R. Gillis, Rural Task Force, to Magalie Roman Salas, FCC, dated November 10, 2000. (see also, *inter alia*, Recommended Decision footnote 31).

Mid-year implementation upset the interrelationship of the parts of the rebasing and recapping plan proposed by the RTF and in the RLC draft rules. Implementation departed from the intent of the rebasing plan when the rules were adjusted to reflect mid-year implementation. Instead of the assumed January 1, 2001 start on which the rules language and impact estimates rested, the Rural Support Order held that “[r]ural carriers shall receive re-based high-cost loop support effective July 1, 2001.” Consequently, the Commission’s staff modified the model rules implementing the RTF plan proposed by the RLC. To adhere to the RTF’s proposal, an entire year’s rebased high-cost loop support should be used as the basis for the following year’s computation utilizing the Rural Growth Factor. If these rules are to implement the clear intent of the Commission’s Order, it is necessary to use a full 12 months of rebased growth and not merely a six-month period.

If the cap for 2002 in §36.603 is calculated literally, based on the expense adjustment for a “calendar year” in which the rule was effective for only half of the intended period, the rural support benefits fall far short of the five-year support available under the rural carrier support mechanism. The support benefits thus also fall far short of the benefits predicted by the RTF and relied upon by the Joint Board, the Commission and the Chairman.

Based on NECA’s updated calculations, applying the new cap without adjusting for a full year’s recalculated support results in a shortfall from the intended support of more than \$77 million for 2002 and a support shortfall of more than \$428 million over the five years of the plan. This significant drop in support – the loss of almost half of the \$1 billion in additional rural support anticipated over five years by Chairman Powell -- invalidates the determination in the Rural Support Order that “the modified embedded cost mechanism is consistent with our obligation to ensure that the support provided to rural carriers over the next five years is specific, predictable, and sufficient.”

We urge the Commission to clarify or amend its rules to conform to the RTF’s consensus regarding the re-basing of the HCLF as the RTF originally agreed. Prompt action could restore the sufficiency and predictability that the Act requires. Otherwise, we are concerned that slashing support in this way will thwart the RTF’s (and the Commission’s) plan for enough support “to ensure that rural carriers can maintain existing facilities and make prudent facility upgrades until such time as a long-term rural plan is adopted.”

We stand ready to work with the Commission and its staff to conform the high cost loop support rule to the plan adopted in the Rural Support Order.

Sincerely,

Dr. William R. Gillis /s/

Director, Center to Bridge the Digital Divide, Washington State University, former
Commissioner of Washington Utilities and Transportation Commission, Rural Task
Force Chair

Robert C. Schoonmaker /s/

Vice-President, GVNW Consulting, Inc., Rural Task Force Secretary

Evelyn Jerden /s/

Director, Revenue Requirements, Western New Mexico Telephone Company

Joan Mandeville /s/

Senior Vice President, Blackfoot Companies

Christopher A. McLean /s/

Vice President, National Strategies, Inc.

Jack Rhyner /s/

President and CEO, TelAlaska

David L. Sharp /s/

Senior Vice President, Innovative Communications Corporation

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